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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/667,921	09/22/2003	Ioana M. RizoIU	BI9100CIPCON	9901
33197	7590	07/13/2007	EXAMINER	
STOUT, UXA, BUYAN & MULLINS LLP			SHAY, DAVID M	
4 VENTURE, SUITE 300			ART UNIT	PAPER NUMBER
IRVINE, CA 92618			3735	
			MAIL DATE	DELIVERY MODE
			07/13/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/667,921	Applicant(s) RIZOIU ET AL.	
	Examiner david shay	Art Unit 3735	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on April 16, 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 27-75 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 27-75 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>June 4, 2007</u> . | 6) <input type="checkbox"/> Other: _____ |

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on April 16, 2007 has been entered.

The amendments filed February 8, 2006, July 20, 2006, and March 8, 2007 are objected to under 35 U.S.C. 132(a) because they introduce new matter into the disclosure. 35 U.S.C. 132(a) states that no amendment shall introduce new matter into the disclosure of the invention. The added material which is not supported by the original disclosure is as follows: the incorporation by reference of the disclosures of applications OTHER than 09/188,072; the inclusion of 60/064,465 in the continuing data; the limitation that obstructions are not present between the cannula lumen and an area of tissue located distally of the open cannula distal end; and the action on tissue within the cannula when the interaction zone is outside of the cannula.

Applicant has argued that Figures 9b and 10b of the original disclosure and the reference to an "open cannula configuration" provide support for the phrase "obstructions are not present between the cannula lumen and an area of tissue located distally of the open cannula distal end". However, the referenced disclosure and Figures merely provides support for the cannula end being open, not for there being no obstruction beyond (located distally of) the end of the cannula. Thus this argument is not convincing.

It is noted that the openings in the tip of Massengill provide no obstruction between the distal tip of the device and the tissue distal thereof.

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The examiner has taken official notice that of the obviousness of configuring devices for and using devices for the removal of fat in joints or the abdomen since these are known sites of fat tissue; to employ sterile fluids, since this prevents infection when operating on internal tissue; to construct the device from medical grade plastics, since this is a notorious material for medical devices; and to construct the device of stainless steel, since this is a notorious material for medical devices and is inert. Applicant has not challenged these determinations and they are now considered admitted prior art.

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 27-69 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The originally filed disclosure is silent on "obstructions are not present between the cannula lumen and an area of tissue located distally of the open cannula distal end".

Claims 27-53, 60-64, and 70-74 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rizoiu et al (WO '928) in combination with Paolini et al, Massengill, and the admitted prior art of configuring devices for and using devices for the removal of fat in joints or the abdomen since these are known sites of fat tissue; to employ sterile fluids, since this prevents infection when operating on internal tissue; to construct the device from medical grade plastics, since this is a notorious material for medical devices; and to construct the device of stainless steel, since this is a notorious material for medical devices and is inert. Rizoiu et al teach a tissue

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removal device and method with hydrokinetic energy generated by the claimed lasers and using water, epinephrine and/or anesthetic as the fluid. Paolini et al teach having the zone wherein ablative energy used to act upon the tissue to be removed interacts therewith beyond the distal end of the cannula. Messangill teaches the removal of fat tissue using a cannula which delivers hydrokinetic energy to the tissue to be removed. It would have been obvious to the artisan or ordinary skill to employ the hydrokinetic energy generators and steps and fluids of Rizioiu et al (WO '928) in the method and device of Massengill, since Massengill teaches no particular laser and since the claimed fluids are equivalent and or compatible with water when generating the hydrokinetic energy, as taught by Rizioiu et al (WO '928); or to employ the cannula delivery system and steps of Massengill in the device and method of Rizioiu et al (WO '928), since Rizioiu et al (WO '928) teaches that the device and method can be used on many kinds of tissue and can include many different types of instruments; and in either case, to configure the device such that the interaction zone is beyond the end of the cannula as taught by Paolini et al, since this is not critical; is well within the skill of one having ordinary skill in the art; and provides no unexpected result; to employ the method on and configure the device for removal of fat tissue in joints or the abdomen since these are known sites of fat tissue, official notice of which has already been taken; to employ sterile fluids, since this prevents infection when operating on internal tissue, official notice of which has already been taken; to construct the device from medical grade plastics, since this is a notorious material for medical devices, official notice of which has already been taken; and to construct the device of stainless steel, since this is a notorious material for medical devices and is inert, official notice of which has already been

taken any disruptive forces will propagate in all directions and act on any tissue which is in the cannula, thus producing a device and method such as claimed.

Claims 55-59, 67-69 and 75 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rizioiu et al (WO '928) in combination with Paolini et al, Massengill, and the admitted prior art of configuring devices for and using devices for the removal of fat in joints or the abdomen since these are known sites of fat tissue; to employ sterile fluids, since this prevents infection when operating on internal tissue; to construct the device from medical grade plastics, since this is a notorious material for medical devices; and to construct the device of stainless steel, since this is a notorious material for medical devices and is inert as applied to claims 27-53, 60-64, and 70-74 above, and further in combination with Kittrell et al. Kittrell et al teach a tissue removal device with imaging capabilities. It would have been obvious to the artisan of ordinary skill to provide the infrared imaging device of Kittrell et al. in the device of Rizioiu et al (WO '928) in combination with Paolini et al, Massengill since this would enable the surgeon to assure that the tissue is kept at a safe temperature, since this will minimize the damage to nerves and blood vessels, thus producing a device such as claimed.

Applicant's arguments with respect to claims 27-75 have been considered but are moot in view of the new ground(s) of rejection.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to david shay whose telephone number is (571) 272-4773. The examiner can normally be reached on Tuesday through Friday from 6:30 a.m. to 5:00 p.m.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Charles Marmor, II, can be reached on Monday, Tuesday, Wednesday, Thursday, and

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Friday. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A handwritten signature in black ink, appearing to read "David M. Shay", is positioned above the printed name.

DAVID M. SHAY
PRIMARY EXAMINER
GROUP 330